

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC MARTIN, #165780,

Plaintiff,

No. 12-CV-14286-DT

vs.

Hon. Gerald E. Rosen

S. KAZULKINA, et al.,

Defendants.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND DISMISSING PLAINTIFF'S COMPLAINT,
IN ITS ENTIRETY, WITHOUT PREJUDICE

This Section 1983 prisoner civil rights matter having come before the Court on the May 16, 2013 Report and Recommendation of United States Magistrate Judge Laurie J. Michelson recommending that the Court (1) grant the motions filed by Defendants Janice Stewart, Sara Rizzo, Dr. Lakshni Garlapti, Diana Heringis, and Michael McCollough to revoke Plaintiffs *IFP* status and to dismiss the Complaint under 28 U.S.C. § 1915(g);¹ (2) deny Plaintiff's motion for sanctions; and (3) dismiss Plaintiff's Complaint, without prejudice; and Plaintiff having timely filed objections to the Magistrate Judge's Report and

¹ Defendants Sofia Kazulkin and Jerry Makin, M.D. were not served with process until after the Magistrate Judge issued her R&R. However, Defendant Kazulkin has since joined in Defendant McCollough's motion and Defendant Makin filed a separate motion to revoke *IFP* status and dismiss the complaint, incorporating Defendant McCollough's motion arguments, by reference. Therefore, the Court includes these defendants as moving parties in this matter.

Recommendation; and the Court having reviewed the Magistrate Judge's Report and Recommendation, Plaintiff's Objections, and the Court's entire file of this action, and having concluded that, for the reasons stated in the Report and Recommendation, Defendants' motions to revoke Plaintiff's *ifp* status and to dismiss Plaintiff's complaint should be granted and this case should, accordingly, be dismissed in its entirety, without prejudice; and the Court being otherwise fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation of May 16, 2013 [**Dkt. No. 27**] be, and hereby is, adopted by this Court.

IT IS FURTHER ORDERED that the Motions to Revoke *In Forma Pauperis* Status and to Dismiss Due to Three Strikes filed by Defendants Stewart, Rizzo, Garlapati, Heringis, McCollough, Kazulkina, and Makin [**Dkt. Nos. 11,13, 33 and 34**], are GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Sanctions [**Dkt. No. 16**] is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Preliminary Injunction [**Dkt. No. 5**] is DISMISSED AS MOOT.

Three defendants -- S. Webster, Dr. Dahl, and Nurse Melissa Millard Schindler -- have not yet been served with process. Plaintiff makes the same allegations against these Unserved Defendants as he made against the moving parties. As set forth in the Magistrate Judge's Report and Recommendation, none of these allegations show that Plaintiff is currently in imminent danger of serious physical harm, and nothing Plaintiff has filed since

filing his Complaint satisfies the imminent danger exception to the three strikes rule, either. Under these circumstances, it would be futile and an uneconomical use of judicial resources to conduct further proceedings against the Unserved Defendants. *See Monk v. Bailey*, No. 1:08–CV–903, 2010 WL 4962960 at *4 (W.D. Mich. Oct. 28, 2010), report adopted by 2010 WL 4963013 (W.D. Mich. Dec. 1, 2010) (dismissing six unserved “Doe” defendants who allegedly denied plaintiff medical treatment where the plaintiff could not establish exhaustion as to any prison personnel); *Columbia Steel Fabricators, Inc. v. Ahlstrom Recovery*, 44 F.3d 800, 802-03 (9th Cir. 1995), *cert. denied*, 516 U.S. 864 (1995) (“Summary judgment may be properly entered in favor of unserved defendants where (1) the controlling issues would be the same as to the unserved defendants, (2) those issues have been briefed, and (3) [p]laintiff has been provided an opportunity to address the controlling issues”) (*citing, inter alia, Silverton v. Dep’t of the Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981)). Therefore,

IT IS FURTHER ORDERED that Plaintiff’s Complaint is DISMISSED, IN ITS ENTIRETY, without prejudice.

IT IS FURTHER ORDERED that, based on the reasons set forth in the Magistrate Judge’s Report and Recommendation of May 16, 2013, this Court certifies that any appeal by Plaintiff would be frivolous and not in good faith. 28 U.S.C. § 1915(a).

Dated: July 24, 2013

s/Gerald E. Rosen
Chief Judge, United States District Court

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on July 24, 2013, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5135